



March 27, 2000

Ms. Leslie Poynter Dixon
Criminal District Attorney
County of Van Zandt
202 North Capitol
Canton, Texas 75103

OR2000-1181

Dear Ms. Dixon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133585.

The Van Zandt County Criminal District Attorney (the “district attorney”) received a request for the “no bill” issued by the grand jury in a specified case. You claim that the requested information is a record of the grand jury and that the grand jury is an element of the judiciary for purposes of the Public Information Act (the “Act”), and as such is not subject to the Act. We have considered your claim and reviewed the submitted information.

The Act requires the release of all information held by a governmental body unless one of the Act’s specific exceptions protects the information from required disclosure. A district attorney’s office is generally considered a “governmental body” for purposes of the Act. *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Thus, all information held by the district attorney in its own capacity is public unless specifically excepted from disclosure.

The judiciary, however, is expressly excluded from the requirements of the Act. Gov’t Code § 552.003(1)(B). This office has determined that a grand jury is a part of the judiciary for purposes of the Act, and therefore not subject to the Act. Open Records Decision No. 411 (1984). Further, records kept by a district attorney who is acting as an agent for a grand jury are considered records in the constructive possession of the grand jury and therefore are not subject to the Act. Open Records Decisions Nos. 513 (1988), 411 (1984), 398 (1983); *but see* Open Records Decision No. 513 at 4 (1988) (defining limits of judiciary exclusion). The fact that information collected or prepared by the district attorney is submitted to the grand

jury does not necessarily mean that the information is in the grand jury's constructive possession when the same information is also held by the district attorney in its own capacity. Information held by the district attorney but not produced at the direction of the grand jury may well be protected under one of the Act's specific exceptions, but it is not excluded from the reach of the Act by the judiciary exclusion. Open Records Decision No. 513 (1988).¹

You state, as custodian of the Van Zandt County Grand Jury records, that you consider "no bills" to be records of the grand jury, and that they are not filed with the district clerk. We conclude that the "no bill" is information held by the district attorney acting as an agent of the grand jury. Such information is considered a record of the judiciary and is not subject to required public disclosure under the Act.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹We also note that article 20.02(a) of the Code of Criminal Procedure states that "[t]he proceedings of the grand jury shall be secret." Thus, information that reveals the proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and excepted from disclosure under section 552.101 of the Government Code.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 133585

Encl. Submitted documents

cc: Mr. Monty Cain
1100 Van Zandt County Road 3307
Willis Point, Texas 76169
(w/o enclosures)